Supreme Court, U.S.
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Case No. 08-___

IN THE

Supreme Court of the United States

CINTAS CORPORATION,

Petitioner,

v.

ROBERT J. ABEL, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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April 21, 2008

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QUESTION PRESENTED

Whether a federal court has subject-matter jurisdiction over a petition to compel arbitration brought under Section 4 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4, when the controversy to be arbitrated involves federal question claims that were initially brought in a different federal court.

LIST OF PARTIES

Cintas Corporation is the Petitioner-Appellee in the court below.

The Respondents-Appellants below are approximately 1,900 Cintas employees, past and present, against whom Cintas filed petitions to compel arbitration in 70 federal judicial districts. The names of these employees are listed in the appendix to this petition ("Pet. App.") at 20a.

STATEMENT REQUIRED BY RULE 29.6

There is no parent or publicly held company that owns 10 percent or more of Cintas Corporation's stock.

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PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

Petitioner Cintas Corporation respectfully requests that this Court grant its petition for a writ of certiorari before judgment.

OPINIONS BELOW

In an unreported order dated April 7, 2008, the Ninth Circuit withdrew submission of this case before it, pending this Court's decision in *Vaden v. Discover Bank*, No. 07-773. A copy of the order appears at Pet. App. 1a. Previously, the court of appeals granted Respondents' application for permission to take an interlocutory appeal under 28 U.S.C. § 1292(b). A copy of that unreported order appears at Pet. App. 2a. The underlying order of the United States District Court for the Northern District of California is unreported but appears at Pet. App. 4a.

JURISDICTION

This case was docketed in the Ninth Circuit in July 2007 and oral argument was presented in December 2007. On April 7, 2008, the court of appeals withdrew submission of the case pending this Court's decision in *Vaden v. Discover Bank*. This petition for certiorari before judgment is filed under Supreme Court Rule 11 and in accordance with 28 U.S.C. § 2101(e). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 4 of the Federal Arbitration Act provides, in part, as follows:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate

> under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

STATEMENT OF THE CASE

In *Vaden v. Discover Bank*, No. 07-773, the Court granted certiorari on a question that has divided the circuits of the Court of Appeals: whether a federal court has subject-matter jurisdiction over a petition to compel arbitration under Section 4 of the FAA whenever the controversy to be arbitrated arises under federal law. The same question is presented here.[1] This case, however, presents the question in a different – and much more direct – light.

Vaden involves state-law counterclaims and an allegation that diversity jurisdiction exists, two factors that could render unnecessary this Court's ultimate determination of the first question presented in the petition in *Vaden*. The case is further complicated by substantial questions as to whether the controversy to be arbitrated arises under federal law and whether the petitioner even agreed to arbitrate.

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[1] Indeed, the petitioner in *Vaden* cited Cintas' case multiple times in her petition, in an effort to convince this Court to accept review. *See Vaden* Cert. Pet. at 11 n.2, 18-19 n.6.

Here, on the other hand, there is no question that the controversy to be arbitrated is federal – indeed, *the claims at issue were brought in litigation in federal court by each of the Respondents under federal question jurisdiction.* The claims did not arise from counterclaims, nor is there a risk of dueling federal and state court jurisdiction. Finally, Cintas' Section 4 petitions do not allege diversity jurisdiction.

In short, this case isolates and crystallizes the precise question that has divided the circuits of the Court of Appeals, and it does so in a manner that enables the Court to explore fully the ramifications of the rule of law that it will adopt. Such circumstances warrant the extraordinary grant of certiorari before judgment.

The case has its genesis in a class action and collective action lawsuit that was filed under federal question jurisdiction in the United States District Court for the Northern District of California, *Veliz v. Cintas Corp.*, No. C-03-1180-SBA. Pet. App. at 39a. The plaintiffs in *Veliz* seek overtime premiums under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), as well as other relief under federal and state law.

In accordance with arbitration agreements executed by most of the *Veliz* plaintiffs, Cintas moved under Section 4 of the FAA to compel arbitration of the claims of most of the initial plaintiffs. Each of these plaintiffs had signed an agreement providing that disputes must be resolved by arbitration in the county and state where he or she most recently worked for Cintas. The district court granted the motion with respect to nearly all of the *Veliz* plaintiffs. *Veliz v. Cintas Corp.*, 2004 WL 2452851

(N.D. Cal. April 5, 2004).

The *Veliz* plaintiffs moved for reconsideration, arguing, among other things, that the district court lacked the power to order arbitration outside the Northern District of California. *See* 9 U.S.C. § 4 ("The hearings and proceedings, under such [arbitration] agreement, shall be within the district in which the petition for an order directing arbitration is filed."). The district court granted the motion in part, holding as to the plaintiffs it had up until then compelled to arbitrate that it could not enforce the arbitration agreements' place-of-arbitration term. *Veliz v. Cintas Corp.*, 2005 WL 1048699 (N.D. Cal. May 4, 2005). The court modified its earlier order "to clarify that the plaintiffs compelled to arbitrate must do so in this judicial district." *Id.* at *7.

Meanwhile, approximately 1,900 additional plaintiffs had opted in to the *Veliz* lawsuit. None of these 1,900 opt-in plaintiffs, each of whom had also signed an agreement requiring arbitration of disputes in the place where he or she last worked for Cintas, were compelled to arbitrate by the orders discussed above. Cintas repeatedly and expressly reserved its rights as to those 1,900 plaintiffs to move in the *Veliz* litigation to stay under FAA Section 3 and to petition under FAA Section 4 in each of the relevant districts to compel each of the respective plaintiffs to arbitrate in the place he or she had agreed.

Cintas accordingly moved to stay further proceedings in the *Veliz* litigation pursuant to Section 3 of the FAA until the 1,900 additional opt-in plaintiffs had arbitrated their disputes with Cintas in

accordance with the terms of their arbitration agreements. The district court, having determined that the agreements were enforceable, granted the motion.

Cintas then filed petitions to compel arbitration under Section 4 of the FAA in the 70 federal judicial districts where the 1,900 plaintiffs last worked for Cintas. Each of these petitions invoked the district court's federal question jurisdiction based upon the FLSA claims raised by those of the 1,900 *Veliz* plaintiffs who had agreed to arbitrate in a place located in the respective district.

The Judicial Panel on Multidistrict Litigation transferred Cintas' 70 petitions to the *Veliz* court for "coordinated or consolidated pretrial proceedings" to determine whether the 1,900 opt-in plaintiffs – now respondents in Cintas' Section 4 actions – were refusing to arbitrate in accordance with the terms of their arbitration agreements. *In re Cintas Corp. Overtime Pay Arbitration Litig.*, 444 F. Supp.2d 1353 (J.P.M.L. 2006). The transferee court conducted the necessary proceedings and concluded that each of the respondents was indeed failing, neglecting and refusing in multiple ways to arbitrate in accordance with the terms of his or her arbitration agreement, including the agreement's place-of-arbitration term. Pet. App. at 9a-15a.

In the course of the proceedings in the transferee court, the 1,900 respondents also argued that the federal courts lacked subject-matter jurisdiction over Cintas' Section 4 petitions even though the claims Cintas sought to have arbitrated were the very federal claims that the respondents – as plaintiffs in

Veliz – had brought in federal court litigation. The court rejected that argument. Pet. App. at 7a n.5.

In view of the circuit split on subject matter jurisdiction, the transferee court certified the jurisdictional question for interlocutory review, while reiterating that it found the rationale of *Discover Bank v. Vaden*, 396 F.3d 366 (4th Cir. 2005), more persuasive than that of *Westmoreland Capital Corp. v. Findlay*, 100 F.3d 263 (2d Cir. 1996).

The Ninth Circuit then granted permission to appeal under 28 U.S.C. § 1292(b). Pet. App. at 2a. After expedited briefing and argument, the case was submitted in December 2007. The Ninth Circuit withdrew submission and elected to hold the case pending this Court's decision in *Vaden*. Pet. App. at 1a.

REASONS FOR GRANTING THE PETITION

This petition for a writ of certiorari before judgment should be granted, and the Court should schedule oral argument in tandem and consider this case simultaneously with *Vaden v. Discover Bank*.

This Court has most frequently exercised its power to grant a petition for a writ of certiorari before judgment in cases that complement a case that is already before the Court.[2] Such cases may present

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[2] *See, e.g., United States v. Fanfan, rep. sub nom. United States v. Booker*, 543 U.S. 220 (2005); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Belgarde v. Suquamish Indian Tribe, rep. sub nom. Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); *New Haven Inclusion Cases*, 399 U.S. 392 (1970); *McCulloch v. Sociedad Nacional de Marineros*, 372 U.S. 10 (1963); *Hannah v. Slawson, rep. sub nom. Hannah v. Larche*, 363 U.S. 420 (1960);

an issue that is closely related to the issue in the pending case. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954) (holding, in a companion case to *Brown v. Board of Education*, 344 U.S. 1 (1954), that the Fifth Amendment prohibits the District of Columbia from maintaining racially segregated schools). Or they may present the same issue in a materially different set of circumstances. *See, e.g., Gratz v. Bollinger*, 539 U.S. 244, 260 (2003) (noting that the Court granted certiorari before judgment "so that [it] could address the constitutionality of the consideration of race in university admissions in a wider range of circumstances").

This case falls into the latter category. Like *Vaden v. Discover Bank*, this case presents the question whether a federal court has jurisdiction over a Section 4 petition whenever the controversy to be arbitrated arises under federal law. Unlike *Vaden*, however, this case involves petitions to compel arbitration of unquestionably federal question claims that actually were brought in litigation in federal court – not state-law counterclaims, arguably subject to federal preemption, that were brought in state court. If the 1,900 plaintiffs had sued Cintas in the appropriate federal districts, there would be no question about those courts' ability to exercise

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United States v. Thomas, 362 U.S. 58 (1960); *Taylor v. McElroy*, 360 U.S. 709 (1959); *Kinsella v. Krueger*, 351 U.S. 470 (1956); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Porter v. Dicken*, 328 U.S. 252 (1946); *Rickert Rice Mills, Inc. v. Fontenot*, 297 U.S. 110 (1936); *United States v. Bankers Trust Co., rep. sub nom. Norman v. Baltimore & Ohio RR. Co.*, 294 U.S. 240 (1935); *Hicks v. Mercantile Trust Co., rep. sub nom. White v. Mechanics Secs. Corp.*, 269 U.S. 283 (1925).

jurisdiction over Cintas' request to compel arbitration over the federal claims.

The proper application of Section 4 in these circumstances is a matter not directly raised in *Vaden*. Accepting this case and considering it simultaneously with *Vaden*, therefore, will enable the Court to implement its ultimate rule of law after fully evaluating two fundamentally distinct but complementary factual and procedural situations.

This Court anticipated that this day would come on the question presented, allowing it to give clear guidance now on that which it previewed a quarter century ago: "Section 4 provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute; hence, there must be diversity of citizenship *or some other independent basis for federal jurisdiction* before the order can issue." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983) (emphasis added). The Court thus presaged that the correct approach to subject matter jurisdiction is that taken by the Fourth Circuit in *Discover Bank v. Vaden*, 396 F.3d 366 (4th Cir. 2005) and *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians*, 177 F.3d 1212 (11th Cir. 1999), and not that taken in *Westmoreland Capital Corp. v. Findlay*, 100 F.3d 263 (2nd Cir 1996) and *Smith Barney, Inc. v. Sarver*, 108 F.3d 92 (6th Cir. 1997).

Recent and thorough scholarship confirms the many reasons why that is so. *See* Imre S. Szalai, *The Federal Arbitration Act and the Jurisdiction of the Federal Courts*, 12 Harv. Neg. L. Rev. 319, 346 (2007) ("[T]he Supreme Court has expressly interpreted § 4

as providing for jurisdiction to compel arbitration when the district court would have jurisdiction over a suit on the underlying dispute to be arbitrated . . . ."). Throughout this Court's decision in *Moses H. Cone*, the Court used the term "underlying controversy" and each time the term clearly refers to the underlying controversy be arbitrated. That interpretation of FAA Section 4 is consonant with the statutory text and purpose.

This Court's discussion of FAA Section 4 in *Moses H. Cone* specifically approves of *Commercial Metals Co. v. Balfour, Guthrie, & Co.*, 577 F.2d 264, 268-269 (5th Cir. 1978) *"and cases cited"* therein. *Moses H. Cone*, 460 U.S. at 25 n.32 (emphasis added). One of those cases so approved is *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 408 (2d Cir. 1959), *cert. dismissed per stipulation* 364 U.S. 801 (1960). *Commercial Metals Co.*, 577 F.2d at 268-269. The Second Circuit in *Robert Lawrence Co.* stated that "the jurisdiction under . . . Section 4 may doubtless in some instances be federal question jurisdiction, based upon rights alleged to arise out of some federal statute other than the Arbitration Act." *Robert Lawrence Co.*, 271 F.2d at 408.

That is the situation in the Cintas case, federal question claims arising under a federal statute other than the FAA. In the Cintas case, the statute is the FLSA. But the correct approach to subject matter jurisdiction under the FAA, which answers the question presented, applies to myriad federal question claims.

I. This Case Complements the Pending Case of *Vaden v. Discover Bank* by Presenting the Same Legal Question in a Substantially Different, and Indeed More Straightforward, Factual and Procedural Setting, in Cases Commenced in 70 District Courts Nationwide.

In light of the certiorari grant in *Vaden*, the present case certainly presents an issue worthy of the Court's immediate attention.[3] Moreover, this case is one of nationwide significance, as pending matters sit before 70 of the federal district courts in the Nation, located in eleven of the circuits of the Court of Appeals.[4] The remaining question is whether this case satisfies the high threshold for certiorari before judgment. Indeed, it does, as it sits comfortably alongside other cases where this Court has invoked that procedure. *See, e.g., United States v. Fanfan, rep. sub nom. United States v. Booker*, 543 U.S. 220 (2005); *Gratz*, 539 U.S. at 259-60; *McCulloch v. Sociedad Nacional de Marineros*, 372 U.S. 10, 12 n.1, 16 (1963) (stating that the case in which certiorari was granted before judgment presented a shared question "in better perspective"); *Porter v. Dicken*, 328 U.S. 252, 253-54 (1946). Accepting this case now will also facilitate the Court's deliberations in *Vaden*.

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[3] Because certiorari has already been granted in *Vaden*, Cintas does not wade through the circuit split in this Petition (nor the merits of each side). Although Cintas does not accept the *Vaden* petitioner's portrayal of the split, Cintas fully agrees that a circuit split exists (as it acknowledged before the Ninth Circuit).

[4] In her reply brief, the *Vaden* petitioner cited the nationwide scope of Cintas' case as a basis for a grant of certiorari on the jurisdictional issue presented in her own case. *See Vaden* Cert. Reply Br. at 7 n.3.

A. This Case Lacks the Complicating Issues Present in *Vaden*.

Vaden presents the jurisdictional question that it shares with this case in a substantially different – and more complicated – set of circumstances. *Vaden* began when Discover Bank's servicing affiliate, Discover Financial Services, Inc. ("DFS"), sued credit card holder Betty Vaden in Maryland state court. Invoking Maryland contract law and state anti-usury statutes, Ms. Vaden filed class action counterclaims against DFS. Discover Bank and DFS (collectively "Discover") then filed a Section 4 petition to compel arbitration of Ms. Vaden's counterclaims in the United States District Court for the District of Maryland.

The district court granted the motion to compel arbitration, but the Fourth Circuit remanded for further consideration of subject-matter jurisdiction. *Discover Bank v. Vaden* (*Vaden I*), 396 F.3d 366, 368, 373 (4th Cir. 2005). The Fourth Circuit was persuaded that a federal court has jurisdiction over a Section 4 petition when the controversy to be arbitrated arises under federal law. *Id.* at 369, 373. The court was not prepared to say, however, whether Ms. Vaden's ostensibly state-law counterclaims arose under federal law. *See id.* at 373. In the court's view, the answer to that question depended on whether the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1811 *et seq.*, completely preempted the counterclaims. *Id.* at 373 n.3. And the answer to *that* question depended on whether Discover Bank – which, unlike DFS, is subject to the FDIA – was "a party of interest" in the state-court action. *Id.*

On remand, the district court concluded that Discover Bank was "the real party in interest" and that the FDIA completely preempted Ms. Vaden's counterclaims. *Discover Bank v. Vaden*, 409 F. Supp. 2d 632, 636-37 (D. Md. 2006). Only after affirming those conclusions would the Fourth Circuit hold that the counterclaims arose under federal law. *Discover Bank v. Vaden* (*Vaden II*), 489 F.3d 594, 598-607 (4th Cir. 2007).

Thus, resolution of the jurisdictional question required resolution of "several legally complex and partially fact-bound inquiries" relating to the federal nature of the underlying controversy. *Vaden I*, 396 F.3d at 373. The existence of those preliminary inquiries sets *Vaden* apart from this case, in which there has never been any doubt about the presence of a federal question in the controversy to be arbitrated. There can be no argument in this case, as there is in *Vaden*, that preliminary matters "would require the Court to delve into complex factual questions that may prevent the Court from . . . addressing the scope of Section 4." *Vaden* Br. in Opp. at 13-14. Because each of the Respondents sued Cintas in a federal question lawsuit on the very FLSA claims that Cintas seeks to arbitrate, this case simply does not hinge on consideration of whether the controversy to be arbitrated is federal.

Vaden is further complicated by the fact that the claims relied upon to supply federal jurisdiction originated as state-law counterclaims. The petitioner in *Vaden* ascribes significance to this fact, insisting that counterclaims alone cannot establish federal question jurisdiction. *See Vaden* Cert. Pet. at 26-32 (*citing Holmes Group, Inc. v. Vornado Air Circulation*

Sys., Inc., 535 U.S. 826, 830-32 (2002)). Although the *Vaden* petition frames this issue as the second question presented, *Vaden* Cert. Pet. at (i), it may at least as easily be viewed as a threshold matter, the resolution of which could precede (or possibly pretermit) consideration of the overarching jurisdictional question. No such complication is present in Cintas' case, of course, the underlying claims having been brought affirmatively as federal claims in the *Veliz* complaint. Pet. App. at 39a.

In addition to these collateral matters, in *Vaden*, the possibility exists that federal question jurisdiction is not even needed. Discover sought to amend its petition to demonstrate the existence of federal diversity jurisdiction. *See Vaden* Br. in Opp. at 3 n.1, 12 n.4. The district court had no occasion to rule on that motion, having determined that it had federal question jurisdiction. But if Discover is correct, then the presence of diversity jurisdiction might render consideration of federal question jurisdiction entirely unnecessary. Cintas, on the other hand, has not maintained in these proceedings that diversity jurisdiction exists. Federal jurisdiction over its Section 4 petitions cannot be determined without resolution of the question on which certiorari was granted in *Vaden*.

Finally, *Vaden* is complicated by a factual dispute over whether the parties entered a valid agreement to arbitrate. *See Vaden I*, 396 F.3d at 367-68; *Vaden II*, 489 F.3d at 607. The *Vaden* respondent identifies this dispute as a "serious obstacle[]" to review of the principal jurisdictional question. *Vaden* Br. in Opp. at 15. In Cintas' case, it is undisputed that each of the respondents signed valid arbitration agreements.

That has long ago been established, with no appeal taken from the *Veliz* court decision so establishing.

In short, this case avoids the complications of *Vaden* and represents an ideal vehicle for resolution of the jurisdictional question presented therein. The case involves clearly federal question claims that were filed in a federal-court complaint. There is no assertion of federal diversity jurisdiction. And there is no factual dispute that might derail the jurisdictional inquiry. A simpler, better illuminated presentation of the jurisdictional question in *Vaden* is unlikely to be found.

B. This Case Highlights the Breadth and Consequences of the Rule Advocated by the Petitioner in *Vaden*.

Beyond presenting the jurisdictional question of *Vaden* without that case's collateral issues, this case brightly illustrates the mischief that would be permitted by a rule contrary to the one adopted by the Fourth Circuit. The rule advocated by the petitioner in *Vaden* – that federal courts may not exercise jurisdiction over a petition to compel arbitration by virtue of a federal question in the underlying controversy – would reward the forum-shopping tactics of parties who, wishing to avoid an arbitration agreement's place-of-arbitration term, bring federal claims in a district court whose territory does not include the contractual place of arbitration. That is exactly what the *Veliz* plaintiffs' counsel did, in an effort to force a nationwide class arbitration (if not litigation) in the Northern District of California. The *Veliz* court believed itself powerless to compel arbitration outside the district under Section 4 of the FAA. If the district courts for

the contractual places of arbitration lacked jurisdiction, Cintas would be unable to obtain federal enforcement of the arbitration agreements according to their terms (even though such enforcement would be available had the plaintiffs sued Cintas in those same district courts).

Thus, Cintas' case reveals the arbitrariness that would result from the rule advocated by the *Vaden* petitioner, and the comfort it would give to forum shoppers suing in breach of an arbitration agreement. Whether a federal district court could enforce an arbitration agreement's place-of-arbitration term would depend on which district the plaintiff chose as the forum for a federal lawsuit brought in violation of plaintiff's agreement to arbitrate. Similarly, if a party resisting arbitration elected not to file a lawsuit, no federal court would have jurisdiction to enforce an agreement to arbitrate federal claims, unless the requirements for diversity jurisdiction happened to be satisfied. The doors to the federal courts would be opened or shut depending on the tactics of the party wishing to avoid arbitration in accordance with the agreement. While the *Vaden* petition sounds alarms about "wasteful litigation," the rule it urges this Court to adopt would only ensure that result. *Vaden* Cert. Pet. at 22.

This case also illustrates the disparate treatment of "embedded" and "independent" requests to compel arbitration under the FAA. Under the *Vaden* petitioner's rule, the determining factor for federal question jurisdiction over a petition to compel arbitration of federal claims is whether the petition was filed in a federal lawsuit initiated by

the other party. For federal question jurisdiction to turn on that factor is inconsistent with the Court's refusal to accord substantive significance, in other contexts, to the "embedded" and "independent" distinction. *See, e.g., Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 87-89 (2000).

The concerns highlighted here will affect a broad range of cases if a federal court cannot derive jurisdiction over a Section 4 petition from a federal question in the underlying controversy. All federal question claims outside of admiralty – claims grounded in antitrust, copyright, employment, and securities law, to name a few – will lie outside the power of federal courts to compel arbitration unless diversity jurisdiction exists or the party resisting arbitration obligingly sues in the proper federal court. Cintas' case is the perfect vehicle for addressing this issue which the Court has already taken up in *Vaden*.

II. The Typical Arguments Against Certiorari Before Judgment Do Not Apply in This Case.

Perhaps the most powerful reason to deny a petition for certiorari before judgment is the benefit this Court gains from the lower court's consideration and analysis of the issues. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 937, 938 (1952) (Burton, J., dissenting from grant of certiorari before judgment). In this case, however, the Ninth Circuit has elected to defer its decision in light of *Vaden*, which means that it will not further elucidate the jurisdictional question pending before the Court.

Other considerations that militate against a grant of certiorari before judgment include the opportunity that intermediate appellate review presents for parties to refine their positions, *see id.*, and the avoidance of undue haste. Neither consideration is implicated here, given that the parties fully briefed and argued their positions to the Ninth Circuit before the Ninth Circuit withdrew submission, and no expedited procedure has been requested in this Court. Cintas seeks simultaneous consideration with *Vaden* to ensure judicial economy, not to effect a rush to judgment.

In short, there is no reason to deny certiorari before judgment that might outweigh the considerable benefit that certiorari in this case would bring to consideration of the jurisdictional issue presented by *Vaden*.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari before judgment should be granted, and the Court should schedule oral argument in tandem and consider this case simultaneously with *Vaden*.

Respectfully submitted,

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